

January 8, 2008

ENVIRONMENTAL COMMITTEE REPORT

An Environmental Committee meeting was held on Tuesday, January 8 at 5:00 p.m. in the County Administration Building, Quorum Court Meeting Room, 215 East Central, Bentonville, Arkansas

Committee Members Present: Brown, Hubbard, Moore, Stephenson, Winscott, Wozniak

Others Present: County Judge Gary Black, Jim Ecker, Ashley Pope, Jeff Hawkins

Media: Eleanor Evans, Daily Record; Scarlet Simms, Morning News

JP Jim Wozniak called the meeting to order at 5:00 p.m.

PUBLIC COMMENTS:

Randall Ward stated that he feels the current unsanitary conditions ordinance is unenforceable because there are no definitions, and suggested that they go back to the version supplied by the Northwest Arkansas Property Rights Association.

Leo Lynch stated that the Quorum Court does not understand the people who live in rural Benton County, or they would not have adopted the unsanitary conditions ordinance.

James Gately stated that one of county government's main functions is to protect the health and safety of the citizens, and thanked the Quorum Court members who voted for the unsanitary conditions ordinance.

Melissa Waits stated that her grandfather left 6 acres to her family which has been used as an illegal dumping site for years, and they cannot afford to clean it up. She said it is not fair for her father to face a possible \$25,000 fine just because he has been paying the taxes on the land, and asked for some help from the county in cleaning it up.

Bob Kossieck stated that he does not believe the environmental officers have the authority to enforce the state regulations.

Don Day stated that the document provided by Randall Ward would have worked fine, but it was reworked into one that does not work, and stated that environmental officers are issuing citations in opposition to the exceptions listed in Article 6 of the ordinance, and that the county should extend the community service program to help the poor and elderly clean up their property.

Andy Yeager stated that he has served with the Beaver Lake Volunteer Fire Department for 20 years, and in years past they could not get any assistance from Little Rock with environmental situations such as oil in the lake or chicken houses being bulldozed, and he encouraged the Quorum Court to give the Environmental Department something they can work with. He added that not very much of Benton County is rural anymore because of so much growth and development in the area.

Tanya Lewis distributed pictures of items in her yard that she was told could be possible violations.

Joel Jones stated that county government derives its power from the people, and that warrants should be required before anyone goes onto private property.

Connie Henry stated that the ordinance is in place, and they should move forward, and commended the Environmental Department for the work they do. She said that the State Health Department

would not respond to their calls for help, but did respond after they were contacted by the Environmental Department.

Theresa Pockrus cited several sections of the Arkansas Code dealing with solid waste, and stated that Benton County should follow these sections.

Bob Trager stated that Environmental Officer Joyce Higgins did not hesitate to pitch in and help them clean up some property and they could not have done it themselves. He urged the Quorum Court to keep strong measures in place to help protect the environment.

Marsha Britton stated that the county has reached critical mass in moving forward on environmental issues, and added that in over 20 years as a Small Claims Court judge, she has discovered that there are more than two sides to every story—there are three: his, hers, and what actually happened, which is usually somewhere in between. She said that people often give different versions of a story because they have different perspectives, and urged the Quorum Court to use the power that they have been given to protect the citizens of Benton County.

OLD BUSINESS:

1. Environmental Regulation Enforcement

JP Wozniak recognized Environmental Services Director Jim Ecker, explained that they have not used the unsanitary conditions ordinance to issue any citations, and that it has only been in effect since January 1. He said he does not believe they will use it for anything other than a very large attractive nuisance, such as a situation which occurred in Prairie Grove. He said there is no mechanism in the ordinance with which to enforce it, and if they have to take action to abate a problem they will not be able to do so without first coming to the Quorum Court for funding.

Jim Ecker stated that out of 572 complaints received by the Environmental Department last year, 42 citations were issued and 24 were issued either to the owner of the property or someone renting it. He said that of the 13 issued for illegal burning, 10 were at the request of a local fire department. He noted that 10 citations were issued then rescinded in cases where they were able to work with the property owner to correct the situation. He said that they issued 18 citations for illegal dumping on someone else's property, and of the 506 cases that were opened last year, 306 have been closed, and approximately 266 are still open. He said it is not usually hard to identify those who are doing the illegal dumping, but they usually commit the offense on their way out of the county so it is almost impossible to locate them.

JP Wozniak asked how many cases they are asked to investigate which turn out to be cases of harassment by one neighbor against another. Jim Ecker stated that he would estimate that about 5% are cases in which someone has called in a complaint against someone because they have a bone to pick with them, and it takes no time at all to make that determination. He said that very often they do not even have to get out of the truck to see that the complaint is unfounded.

JP Moore asked if there are any written standards which reflect the state regulations they are enforcing. Jim Ecker stated that every case is different, and noted that the Quorum Court worked on a nuisance ordinance for 2 ½ years and could not agree on guidelines. JP Moore asked about situations where some are being cited for conditions which are similar to a neighbor who is not cited. He said that he realized they are investigating on a complaint basis, but it gives the impression of unfairness. Jim Ecker stated that in the past they would issue warnings if any problems on nearby property were visible to them in the course of investigating a complaint, because it was a more efficient use of fuel. Jim Ecker stated that he was instructed not to investigate anything on sight, but only to respond to complaints. JP Moore asked if individuals are given the option of screening their junk instead of cleaning it up, since the county has a junkyard

screening ordinance. Jim Ecker stated they are issuing citations under A.C.A. 8-6-205 for things that are or are likely to cause, an environmental hazard. He said that new or expanded junkyards must go through the permitting process, and they use the county's flyover data to measure if someone has increased the size of their junkyard.

JP Hubbard asked Jim Ecker what kind of training is being done with the Environmental Officers in order for them to use good judgment when they go out and look at a site, and stated that Jim Ecker is more than welcome to respond to some of the accusations that have been made for the last 2 or 3 months, because some of them are pretty serious. He said they have seen pictures of some of the violations and they seem pretty minor, and it almost seems like an officer has a bone to pick with someone.

Jim Ecker stated that they cannot say that 2 tires are OK, but 2 ¼ tires are not, and that is what JP Moore was referring to. He said he is in daily communication with the officers, and when a problem comes up, they discuss it; they do not just write tickets right and left. He said that in the 7 years he has been the Environmental Director, 42 is the highest number of citations they have written. He said they have never lost a court case, because they do not issue a citation until they have tried everything else, and have extensive documentation and pictures. He said if they cannot make the case, they do not issue the citation. He noted that if you go before a District or Circuit Court Judge with a frivolous case, they will rip you up pretty fast. He said that pictures that JP Hubbard is referring to are from a property where no citation was issued. He said the officer was invited to come onto the property by the property owner, asked to specifically point out what would be considered a violation, and no citation or notice was issued, so it is a non-issue.

JP Wolf stated that she is bothered by information that situations are being looked at on private roads that are not visible from public roads, and on properties that are larger than 10 acres, which are exempt. She said whether the accusations of people being threatened and told that the environmental officers have more authority than the Sheriff are true or not, they should be addressed, because that is not the way the county does business.

Jim Ecker stated that they do not threaten anyone, but will explain to someone what can happen if they do not make any attempt to clean up their property. He said they show the property owners a copy of A.C.A. 8-6-205, and explain the worst case scenario, and the environmental officers have recycling brochures and lists of addresses of places where iron and other metals can be taken. He said they make every attempt to work with people, and issuing a citation is the last step they want to take because they would rather see the site cleaned up to an acceptable standard.

JP Glass stated that the original purpose of the meeting was to address complaints about enforcement, and Ms. Lewis told him that she came home from work to find the officer on her property walking around. He said that information relayed to him from some constituents after visits from the Environmental Department indicated that the enforcement was harsh, and that they were essentially adjudicated as criminals guilty of dumping solid waste on their land, and were told that some things were violations that may or may not actually be an environmental hazard, like a t-shirt left by a construction worker in the driveway, or a carpet remnant not readily observable without walking around on the property. He said the previous nuisance ordinance was defeated because there was an outcry that state laws were already in place, and the environmental officers should be empowered to enforce those state laws rather than rely on the Sheriff's Department to enforce them. He said that he has been told by Chief Yeager that during previous administrations they could not get any assistance from the Sheriff's Department when dealing with environmental issues, but he has not needed to contact the Sheriff during the current administration because he

now relies on the Environmental Department. He asked Jim Ecker about the state law cited during public comments which requires the county to provide for solid waste disposal.

Jim Ecker stated that the county satisfies that requirement through the Benton County Solid Waste Board, because they provide for the regulation of solid waste disposal, although there is not a free trash disposal service. He said that the environmental officer was asked by Ms Lewis to wait for her on her property, and it is now a he said/she said situation because there was no notice of violation given, no citation written, no photographs taken, and there was no complaint. He said that is the reason that when they do issue a notice of violation, they have pictures and documentation. He said it is not necessary to take his word for it; they can simply look at the files and see the work the officers have done.

Jim Ecker repeated that in 7 years, they have never lost a case, so the Circuit Judges and the District Court Judges must think they are meeting the criteria.

JP Stephenson asked how the cases end up in court. Jim Ecker stated that when they find a violation of state law, and there is dumping on someone else's property, they try to find the person and issue a citation. He said if it is on someone's own property, they try to work with them, and sometimes the fire department requests that a citation be issued for illegal burning. JP Stephenson asked under which law they are appearing before a judge. Jim Ecker stated that all of the cases to this point have been under A.C.A. 8-6-205, and if the property owner is obviously aware that they are committing a violation, or refuses to work to try to clean up the property, then it is turned over to the prosecuting attorney.

JP Stephenson described a scenario in which a property covered in garbage is investigated after a complaint by a neighbor, and the owner ignores the citation. He asked what the next step would be. Jim Ecker stated that they would not take any more action, but would wait for the person to show up in court, and if they do not, a warrant is issued for "Failure to Appear". JP Stephenson said it seems ludicrous that with today's cost of fuel they ignore obvious violations as they are driving by them just because there has been no complaint, and asked at which meeting Jim Ecker had gotten the impression that the Quorum Court wanted him to follow that policy. Jim Ecker stated that he agreed, and would find the records and get back to him.

JP Wozniak stated that Jim Ecker is the Environmental Director, and if there are any problems from this point on with the Department's enforcement of the ordinance, they may need to address them at a later time. He added that for now, they need to let them go out and enforce the ordinance and see how things go.

JP Winscott asked if the JPs make themselves available, are they welcome to accompany the environmental officers on their investigations. Jim Ecker stated that he has repeatedly made the statement that any JP is welcome to ride along anytime.

Meeting adjourned at 6:05 p.m.